

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff

v.

CRIMINAL 08-0068 (ADC)

DANIEL DURÁN-BERROA,

Defendant

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
RE: RULE 11 PROCEEDINGS (PLEA OF GUILTY)

I. Personal Background

On March 5, 2008, Daniel Durán-Berroa, the defendant herein, was charged in a one-count indictment. Count one charges defendant of being an alien previously deported and removed from the United States, was found in the United States, in Trujillo Alto, Puerto Rico, without having obtained prior to his reembarkation at a place outside the United States, the express consent from the Attorney General of the United States, or his successor, the Secretary of Homeland Security, acting through the Under Secretary for Border and Transportation Security, pursuant to 6 U.S.C. §§ 202(3), 202(4) and 557, to such alien's reapplying for admission into the United States.

The aforesaid offense was committed after defendant was convicted and deported for the commission of an aggravated felony. All in violation of 8 U.S.C. § 1326(a) and (b)(2).

II. Consent to Proceed Before a Magistrate Judge

Today, while assisted by Raymond Sánchez-Maceira, Esq., the defendant, by consent, appeared before me in order to change his previous not guilty plea to a plea of guilty as to the indictment.

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In open court the defendant was questioned as to the purpose of the hearing being held. The defendant responded that the purpose of the hearing was to plead guilty. The defendant was advised of his right to have all proceedings, including the change of plea hearing, before a United States district judge. Defendant was given notice of: (a) the nature and purpose of the hearing; (b) the fact that all inquiries were to be conducted under oath and that it was expected that his answers would be truthful (he was also explained that the consequences of lying under oath could lead to a perjury charge); and (c) his right to have the change of plea proceedings presided over by a district judge instead of a magistrate judge. The defendant was also explained the differences between the appointment and functions of the two. The defendant consent to proceed before this magistrate judge.

III. Proceedings Under Rule 11, Federal Rules of Criminal Procedure

A. Compliance With Requirements Rule 11(c)(1)

Rule 11 of the Federal Rules of Criminal Procedure governs the acceptance of guilty pleas to federal criminal violations. Pursuant to Rule 11, in order for a plea of guilty to constitute a valid waiver of the defendant's right to trial, guilty pleas must be knowing and voluntary: "Rule 11 was intended to ensure that a defendant who pleads guilty does so with an 'understanding of the nature of the charge and consequences of his plea.'" United States v. Cotal-Crespo, 47 F.3d 1, 4 (1st Cir. 1995) (quoting McCarthy v. United States, 394 U.S. 459, 467 (1969)). [There are three core concerns in these proceedings]: 1) absence of coercion; 2) understanding of the charges; and 3) knowledge of the consequences of the guilty plea. United States v. Cotal-Crespo, 47 F.3d at 4 (citing United States v. Allard, 926 F.2d 1237, 1244-45 (1st Cir. 1991)).

United States v. Hernández-Wilson, 186 F.3d 1, 5 (1st Cir. 1999).

In response to further questioning, the defendant noted that he understood that if convicted of count one of the indictment, he was exposed to a maximum term of imprisonment of 20 years, and a maximum fine of \$250,000. He also acknowledged that a maximum three-year supervised release term could be imposed

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3 and that he was to pay a monetary assessment fee in the amount of \$100. See 18
4 U.S.C. § 3013.

5 Defendant was advised that the ultimate sentence was a matter solely for the
6 court to decide in its discretion and that, even if the maximum imprisonment term
7 and fine were to be imposed upon him, or any number of years up to the maximum,
8 he later could not withdraw his guilty plea if he was unhappy with the sentence of
9 the court. The defendant understood this.

10 Defendant was explained what the supervised release term means. It was
11 emphasized that cooperation with the United States Probation officer would assist
12 the court in reaching a fair sentence.

13 Emphasis was made on the fact that at this stage, no prediction or promises
14 as to the sentence to be imposed could be made by anyone. Defendant responded to
15 questions in that no promises, threats or predictions as to what sentence will be
16 imposed have been made to him.

17 B. Admonishment of Constitutional Rights

18 To assure defendant's understanding and awareness of his rights, defendant
19 was advised of his right:

20 1. To remain silent at trial and be presumed innocent, since it is the
21 government who has the burden of proving his guilt beyond a reasonable doubt.

22 2. To testify or not to testify at trial, and that no comment could be made by
23 the prosecution in relation to his decision not to testify.

24 3. To a speedy trial before a district judge and a jury, at which he would be
25 entitled to see and cross examine the government witnesses, present evidence on his
26 behalf, and challenge the government's evidence.

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3 4. To have a unanimous verdict rendered by a jury of twelve persons which
4 would have to be convinced of defendant's guilt beyond a reasonable doubt by means
5 of competent evidence.

6 5. To use the subpoena power of the court to compel the attendance of
7 witnesses.

8 Upon listening to the defendant's responses, observing his demeanor and his
9 speaking with his attorney, it is determined that defendant is aware of his
10 constitutional rights.

11 C. Consequences of Pleading Guilty

12 Upon advising defendant of his constitutional rights, he was further advised
13 of the consequences of pleading guilty. Specifically, defendant was advised that by
14 pleading guilty and upon having his guilty plea accepted by the court, he will be
15 giving up the above rights and would be convicted solely on his statement that he is
16 guilty.

17 Furthermore, the defendant was admonished of the fact that by pleading guilty
18 he would not be allowed later on to withdraw his plea because he eventually might
19 disagree with the sentence imposed, and that when he were under supervised
20 release, and upon violating the conditions of such release, that privilege could be
21 revoked and he could be required to serve an additional term of imprisonment.

22 D. Plea Agreement

23 The parties have not entered into any written or oral plea agreement. This is
24 a straight plea.

25 E. Government's Evidence (Basis in Fact)

26 The government presented a proffer of its evidence with which the defendant
27 concurred. The government's proffer complied with and tracked the statutory
28 language as to the indictment.

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Accordingly, it is determined that there is a basis in fact and evidence to establish all elements of the offense charged.

F. Voluntariness

The defendant accepted that no leniency had been promised, no threats had been made to induce him to plead guilty and that he did not feel pressured to plead guilty. He came to the hearing for the purpose of pleading guilty and listened attentively as the prosecutor outlined the facts which it would prove if the case had proceeded to trial.

IV. Conclusion

The defendant, by consent, has appeared before me pursuant to Rule 11, Federal Rules of Criminal Procedure, and has entered a plea of guilty to the indictment.

After cautioning and examining the defendant under oath and in open court, concerning each of the subject matters mentioned in Rule 11, as described in the preceding sections, I find that the defendant Daniel Durán-Berroa is competent to enter this guilty plea, is aware of the nature of the offenses charged and the maximum statutory penalties that the same carries, understands that the charges are supported by the government's evidence, has admitted to every element of the offenses charged, and has done so in an intelligent and voluntary manner with full knowledge of the consequences of his guilty plea.

Therefore, I recommend that the court accept the guilty plea of the defendant and that the defendant be adjudged guilty as to the indictment.

This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B) and Rule 504.3 of the Local Rules of Court. Any objections to the same must be specific and must be filed with the Clerk of Court within five (5) days of its receipt. Rule 510.1, Local Rules of Court; Fed. R. Civ. P. 72(b). Failure to timely file specific

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3 objections to the report and recommendation is a waiver of the right to review by the
4 district court. United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986).

5 At San Juan, Puerto Rico, this 25th day of April, 2008.
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7 S/ JUSTO ARENAS
8 United States Magistrate Judge
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